Supreme Court, U.S.
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No. 96-1830

In The

Supreme Court of the United States

October Term, 1996

TRACTOR SUPPLY COMPANY, INC.,

Petitioner,

v.

VINCENT L. PRYNER,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITIONER'S REPLY BRIEF

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CORPORATE STATEMENT

Petitioner, Tractor Supply Company, Inc., has no parent companies or nonwholly owned subsidiaries to be listed pursuant to Rule 29.6.

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INTRODUCTION

The issue presented in the petition for writ of certiorari – whether a voluntary agreement to arbitrate federal statutory employment claims is enforceable under *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991), notwithstanding that it is part of a collective bargaining agreement – is ripe for review by this Court.

ARGUMENT

There is a clear split in the Circuits on this issue which will not be resolved absent this Court's action. In its opinion, the Seventh Circuit held that:

> the union cannot consent for the employee by signing a collective bargaining agreement that consigns the enforcement of statutory rights to the union-controlled grievance and arbitration machinery created by the agreement.

(App.[1] 23.) In reaching its opinion, the Seventh Circuit acknowledged a Circuit split between the Fourth and Eighth Circuits. (App. 24, *citing Austin v. Owens-Brockway Glass Container, Inc.*, 78 F.3d 875, 885 (4th Cir.), *cert. denied*, 117 S. Ct. 432 (1996), and *Varner v. National Supermarkets, Inc.*, 94 F.3d 1209, 1213 (8th Cir. 1996), *cert. denied*, 117 S. Ct. 946 (1997).) After the Seventh Circuit aligned with the Eighth Circuit on this issue, the Tenth Circuit also held similarly. *Harrison v. Eddy Potash, Inc.*, 112 F.3d 1437, 1453-54 (10th Cir. 1997) (plaintiff not required to comply

[1] "App. ___" refers to the Appendix filed with the Petition for Writ of Certiorari.

with a collective bargaining agreement's ("CBA's") grievance and arbitration procedures prior to filing suit in federal court). However, the Fourth Circuit's opinion in *Austin* – holding that an agreement to arbitrate statutory claims is enforceable even if arising in the context of a collective bargaining agreement – remains viable and has been followed by several district courts both inside and outside the Fourth Circuit.[2] *Austin*, 78 F.3d at 885. Finally, the Third Circuit has ordered a rehearing *en banc* of this issue in a case pending before it. *Martin v. Dana Corp.*, 1997 U.S. App. LEXIS 13791 (3d Cir. June 12, 1997), *vacated and rehearing en banc ordered* July 1, 1997. Regardless of the Third Circuit's holding, it will only add to the split currently present in the Circuits.

Respondent attempts to downplay the split in the Circuits with its assertion that *Austin* was an "unusual" case because the CBA in question specifically incorporated external law and thus is not reflective of a true Circuit split. This argument is without merit. The Seventh Circuit rendered its holding without regard to whether the collective bargaining agreement made specific mention of external law or not. Indeed, as Respondent notes, the Seventh Circuit decided both the instant case and a related case, *Sobierajski v. Thoesen Tractor & Equipment Co.*, in the case below. The CBA in this related case contained

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[2] Respondent argues that the number of district court cases addressing this issue (and conflicting on this issue) is irrelevant. As stated in the Petition for Certiorari (at 11-13), Petitioner raises the proliferation of these cases not to illustrate the evident Circuit split, but rather to illustrate the number of pending cases in the lower courts which turn on resolution of this issue.

the so-called "unusual" language Respondent claims led to the *Austin* court's result. (App. 25.) Despite this fact, the Seventh Circuit drew no material distinction between the two cases, and its holding applied equally to both. (App. 23.) Furthermore, neither the Tenth Circuit nor Eighth Circuit based its holding on whether or not the CBA in question was "usual" or "unusual" in type. *See Harrison,* 112 F.3d at 1454 (court notes that it does not know the language of the CBA at issue); *Varner,* 94 F.3d at 1213 (court does not address the language of the CBA). Respondent's attempt to draw an artificial distinction between the Fourth Circuit's holding and the holdings of the Seventh, Eighth and Tenth Circuits is without support in the applicable case law. Clearly, there is a split in the Circuits on this issue.

This case provides this Court with an opportunity to resolve this important issue. Respondent's efforts to recast the Seventh Circuit's opinion as resting on the language in the CBA is erroneous. The Seventh Circuit's holding broadly encompasses all CBAs regardless of their specific language. (App. 23.) More importantly, however, is the fact that the language in the relevant CBA is broad enough to encompass all of Respondent's claims. In the "Steelworkers Trilogy" of 1960, this Court established that arbitration is favored in labor disputes and that any doubts concerning a party's intent to arbitrate must be construed in favor of arbitration. *United Steelworkers of America v. Enterprise Wheel & Car Corp.,* 363 U.S. 593 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.,* 363 U.S. 574 (1960); and *United Steelworkers of America v. American Manufacturing Co.,* 363 U.S. 564 (1960). Thus, "[a]n order to arbitrate the particular grievance should not be denied unless it may be said with

positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." *Warrior & Gulf Navigation Co.*, 363 U.S. at 582-83.

Not only are arbitration clauses read broadly in the context of collective bargaining agreements, but this Court extended such a broad reading outside the union setting. In *Gilmer*, this Court held that an employee had agreed to arbitrate his claim of discrimination under the Age Discrimination in Employment Act ("ADEA"). 500 U.S. 20. The agreement in question did *not* expressly prohibit age discrimination or violations of any employment law. In fact, the agreement in *Gilmer* did not even mention the words "discriminate" or "law(s)" and did not enumerate the forms of discrimination prohibited by fair employment laws. Nevertheless, this Court held that the plaintiff in *Gilmer* had agreed to arbitrate his ADEA claim under an agreement that simply provided for arbitration of:

> [a]ny controversy between a registered representative and any member or member organization *arising out of the employment or termination of employment* of such registered representative.

Id. at 23 (emphasis added).

Based on this Court's precedent, both inside and outside the collective bargaining realm, the collective bargaining language in the present case would be held to cover Respondent's claims because it specifically provides for Americans With Disabilities Act rights and prohibits conduct proscribed by Title VII and Section 1981.

Finally, this Court should resolve this issue because, as the Seventh Circuit noted, it is unresolved by this

Court's decisions in *Gardner-Denver* and *Gilmer*. (App. 27.) The Circuits need guidance from this Court concerning how to reconcile the *Gardner-Denver* and *Gilmer* decisions when deciding this important issue.

CONCLUSION

For the reasons stated above and in the Petition for Writ of Certiorari, this petition should be granted.

Dated this 25th day of July, 1997.

Respectfully submitted,

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